



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
MISC. CIVIL APPLICATION NO.43 OF 2016

GEORGE MAENGWE

t/a G. M MAENGWE & CO. ADVOCATES.....APPLICANT

VERSUS

DOMINIC KIBET BORE.....1ST RESPONDENT

SABINA KIBERE MWEI.....2ND RESPONDENT

AND

NATHAN MWEMA AMKOA

t/a ONGUMWE AUCTIONEERS.....INTERESTED PARTY

RULING

1. Before me is an application dated 24th May 2019.
2. In this matter, an application by way of Notice of Motion dated 5th December 2016 was filed by M/s G. M. Maengwe & Co. Advocates for George Maengwe t/a Maengwe & Co. Advocates against Dominic Kibet Bore and Sabina Kibere Mwei as respondents and Nathan Mwema Amkoa t/a Ongunwe Auctioneers as interested parties on 5th December 2016.
3. The said application sought an order compelling Dominic Kibet Bore and his brother Vincent Bore to produce the proclaimed and attached properties to the applicant. The said application was struck out by the Deputy Registrar, who was the Taxing Officer.
4. There was also an application dated 6th December 2016 filed by J. K. Rono & Co. Advocates for George Maengwe against Dominic Kibet Bore and Sabina Bore seeking to set aside or review of the assessed costs, and assessing of the Bill of Costs afresh in the interests of justice. This application also appears to have been determined by the Taxing Officer on 13th December 2016.
5. Thereafter, the present application dated 24th May 2019, was filed by way of Notice of Motion on 13th June 2019 by Anyoka & Associates Advocates for George M. Maengwe t/a G. M. Maengwe & Co. Advocates against Dominic Kibet Bore and Sabina Kibere Mwei under section 48, 49, 52 (2) of the Advocates Act (Cap 16) and Order 36 Rules 1 & 8, Order 51 Rule 1 & 3 of the Civil Procedure Rules 2010, as well as section 3 and 3A of the Civil Procedure Act (Cap.21) seeking the following orders:-

1. That summary judgment be entered against the respondent for the sum of Kshs.211,537/- plus interest at court rates from 1st November 2016 to date.

2. That costs of the application be in the cause.

6. The grounds of the application are that the applicant is the holder of a Certificate of Costs for the above amount from 1st November 2016, and that the claim is for a straight forward liquidated sum already determined by the court. No response was filed to the application.

7. I have seen the copy of Certificate of Costs dated 1st November 2016 and the original signed by the Deputy Registrar, High Court, Kericho on 11th November 2016. The application, though served is not opposed. I am thus satisfied that indeed the requirements for entry of judgment have been satisfied. I only note that execution was initially effected through M/s Ongumwe Auctioneers even before judgment for the amount was entered, which in my view, was premature and illegal, as only a judgment or final order of the court can be executed upon.

8. Consequently, I allow the Notice of Motion dated 24th May 2019 and grant prayers 1 and 2, which I have reproduced earlier on in this ruling. In effect summary judgment has herein been entered. It is so ordered.

Dated and delivered at Kericho this 16th day of October 2019.

George Dulu

JUDGE